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UNITED STATES DISTRICT COURT  
  
NORTHERN DISTRICT OF CALIFORNIA

JOHN EARL CAMPBELL,  
  
Plaintiff,

v.

NATIONAL RAILROAD PASSENGER  
CORPORATION dba AMTRAK, JOE DEELY  
and DOES 1 through 15 inclusive,  
  
Defendants.

Case No. C05-05434 MJJ

**JOINT CASE MANAGEMENT  
STATEMENT AND [PROPOSED]  
CASE MANAGEMENT ORDER**

Plaintiff John Earl Campbell and Defendants National Railroad Passenger Corporation  
("Amtrak") and Joe Deely ("Defendants") (Plaintiff and Defendants collectively referred to  
herein as "the Parties") jointly submit this Joint Case Management Statement and [Proposed]

Case Management Order and request the Court to adopt it as its Case Management Order in this case.

**DESCRIPTION OF THE CASE**

**1. A brief description of the events underlying the action**

**A. Plaintiff's brief description:**

MR. CAMPBELL is a veteran railroad worker. He commenced his employment with Defendant AMTRAK as a conductor in 1998. Between 1998 and 2004, he applied for a promotion to the position of Engineer six (6) times. Each time his application was rejected and a less qualified, less senior Caucasian applicant was promoted to the position. MR. CAMPBELL is informed and believes that Defendant AMTRAK has intentionally not hired or promoted an African-American to an Engineer position in Northern California since 1998.

In June 1999, MR. CAMPBELL applied for the Engineer position for the first time. His application was rejected on the grounds that he was not eligible to apply based on the length of his employment with AMTRAK. In 2000 and 2001, MR. CAMPBELL was interviewed for the Engineer position but other applicants with less seniority were selected. In 2002, his scheduled interview was cancelled.

In November 2003, MR. CAMPBELL applied for the Engineer position for the fifth time. Interviews were held in December 2003, but he was not scheduled for an interview at all. On or about January 8, 2004, he learned that two less qualified Caucasian applicants with less seniority were selected for the position.

On January 28, 2004, MR. CAMPBELL filed a Charge of Discrimination with the California Department of Fair Employment & Housing (DFEH) and the United States Equal Employment Opportunity Commission (EEOC) challenging his non-selection for the Engineer position and asserting that Defendant AMTRAK discriminated against African-Americans on the basis of race in promoting applicants to the Engineer position.

In or about June 2004, while his Charge of Discrimination was pending, MR. CAMPBELL applied for the Engineer position for the sixth time. There were a total of seven (7)

1 positions available in Oakland and Sacramento. MR. CAMPBELL was interviewed on July 7,  
2 2004. Defendant AMTRAK uses a scoring system in which applicants are assigned a numerical  
3 value based upon their answers to the interviewer's questions. MR. CAMPBELL is informed and  
4 believes that his overall score was among the highest scores of the approximately thirty (30)  
5 applicants interviewed over a three-day period. In August 2004, however, several less qualified  
6 Caucasian applicants with less seniority were selected for the positions. MR. CAMPBELL was  
7 not promoted or given any reason for his non-selection.

8 On or about August 6, 2004, MR. CAMPBELL was accused of violating Defendant  
9 AMTRAK's Operating Rules and faced formal disciplinary charges arising out of an incident  
10 which allegedly occurred on July 24, 2004. MR. CAMPBELL was falsely accused of failing to  
11 properly secure the brakes on a locomotive inside the Oakland Yard prior to coupling it. An  
12 internal hearing was held on September 9, 2004, and Defendant AMTRAK's Hearing Officer  
13 sustained four (4) of the five (5) charges Defendant AMTRAK brought against MR.  
14 CAMPBELL.

15 On September 17, 2004, Defendant AMTRAK terminated MR. CAMPBELL's  
16 employment, ostensibly for the rules violations. MR. CAMPBELL is informed and believes that  
17 an alleged violation of these work rules, even if true, does not usually result in termination of  
18 employment.

19 Mr. Campbell contends that Defendant AMTRAK's failure to promote MR. CAMPBELL  
20 is consistent with a pattern and practice of discrimination and promotion-bias against minority  
21 employees. Defendant AMTRAK's retaliatory termination of MR. CAMPBELL is consistent  
22 with a pattern and practice of retaliation against minority employees who challenge AMTRAK's  
23 discriminatory practices.

24 B. Defendants' brief description:

25 Defendants took no action against Plaintiff because of his race and all of Defendants'  
26 actions were taken for legitimate, non-discriminatory and non-retaliatory business reasons.  
27 Plaintiff was lawfully terminated in September 2004 for repeated rules violations. Plaintiff  
28

1 repeated failed to properly move and secure trains, leading to damage and a derailment. Prior to  
2 Plaintiff's termination, he was formally disciplined twice for similar misconduct, receiving a  
3 lengthy unpaid suspension on one prior occasion. Plaintiff's discipline and eventual termination  
4 were both upheld by a review board. In short, Campbell has absolutely no support for his  
5 wrongful termination claim, including any discrimination or retaliation claims stemming from  
6 his termination.

7 Campbell's allegation that he was unlawfully denied promotions to an engineer position  
8 appear to be equally without merit. Defendants have already confirmed that Campbell's claims  
9 surrounding his 1999 and 2003 "applications" are totally without merit. When Defendant  
10 Amtrak attempted to investigate Plaintiff's promotion claims, Campbell hung up on the  
11 Company's Case Intake Coordinator. Notwithstanding Campbell's obstructive behavior,  
12 Defendants are confident Campbell's remaining promotion claims will quickly be established as  
13 equally baseless.

14 Defendant Deely is an inappropriate Defendant in this action, as his remote limited  
15 actions involving Plaintiff were purely supervisory. Defendant Deely intends to seek Rule 11  
16 sanctions against Plaintiff and his counsel if Deely is not removed as a Defendant from the  
17 Complaint within twenty-one days after Plaintiff's counsel receives formal notice.

18 **2. The principal factual issues which the parties dispute:**

- 19 a. Whether Plaintiff was performing satisfactorily and competently in his position  
20 prior to and at the time he was terminated;
- 21 b. Whether Defendants took any adverse action against Plaintiff, including any  
22 failure to promote him to an engineer position, because of his race;
- 23 c. Whether Defendants treated Plaintiff differently than similarly situated  
24 employees after he complained of race discrimination;
- 25 d. Whether Defendants terminated Plaintiff due to his complaint of racial  
26 discrimination to Amtrak;
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- e. Whether Plaintiff appropriately applied for a promotion to an engineer position;
- f. Whether Plaintiff was qualified for a promotion to an engineer position, both in terms of meeting minimum qualifications and in terms of being more qualified than others not selected for an engineer position;
- g. The extent, if any, of Plaintiff's efforts to mitigate his damages;
- h. Whether Plaintiff has suffered severe emotional distress as a result of any conduct by Defendants;
- i. Whether Plaintiff has suffered any of the damages alleged in his Complaint, and if so, what is the extent of any such damages;
- j. Whether Plaintiff was treated differently by Defendants because of his race;
- k. Whether Plaintiff was subjected to any adverse employment action based on his race;
- l. Whether Defendant Amtrak has a history, pattern and practice of racial discrimination [Defendants do not concede this is a material factual issue in dispute in this case and reserve the right to contest such];
- m. Whether Defendants acted with malice, fraud, or oppression in their dealings with Plaintiff;
- n. Whether Defendants engaged in extreme and outrageous conduct with the intent to cause, or a reckless disregard of the probability of causing, Plaintiff emotional distress;
- o. The parties reserve the right to modify or supplement this list of disputed factual issues if and when additional or different issues become known to the parties.

**3. The principal legal issues which the parties dispute:**

- a. Whether Plaintiff was discriminated against based on his race;
- b. Whether Defendants appropriately investigated Plaintiff's claim of racial

- 1 discrimination;
- 2 c. Whether Defendants' termination of Plaintiff was unlawful;
- 3 d. Whether Amtrak's termination of Plaintiff violates public policy;
- 4 e. Whether Plaintiff is time barred from alleging Amtrak's alleged failure to
- 5 promote him to an engineer position was unlawful.
- 6 f. Whether Defendants had legitimate, non-discriminatory and non-retaliatory
- 7 reasons for their treatment of Plaintiff, including his termination;
- 8 g. Whether Plaintiff can refute Defendants' legitimate, non-discriminatory and
- 9 non-retaliatory business reasons for their conduct and establish those reasons
- 10 were pretext for discrimination or retaliation;
- 11 h. Whether Plaintiff exercised any statutorily protected rights during his
- 12 employment and whether there is any causal connection between the alleged
- 13 adverse action by Defendants and Plaintiff's exercise of those rights;
- 14 i. Whether Plaintiff's alleged emotional distress was actually and proximately
- 15 caused by Defendants' conduct;
- 16 j. Whether Plaintiff can establish a claim for punitive damages, including
- 17 whether Defendants acted with malice or reckless disregard to Plaintiff's
- 18 rights;
- 19 k. Whether Plaintiff's Complaint states any claim upon which relief may be
- 20 granted against Defendants. Plaintiff does not concede this is a material legal
- 21 issue in this case and reserves the right to contest such.
- 22 l. Whether Plaintiff's fails to state facts sufficient to constitute a cause of action
- 23 upon which relief can be granted against any Defendant. Plaintiff does not
- 24 concede this is a material legal issue in this case and reserves the right to
- 25 contest such.
- 26 m. Whether Plaintiff's damages should be barred or limited by his failure to
- 27 mitigate;
- 28

- 1 n. Whether Plaintiff's Complaint is barred by section 301 of the National Labor  
2 Relations Act. Plaintiff does not concede this is a material legal issue in this  
3 case and reserves the right to contest such.
- 4 o. Whether some or all of Plaintiff's claims are preempted by the Railway Labor  
5 Act, 45 U.S.C. Section 151, et.seq. Plaintiff does not concede this is a material  
6 legal issue in this case and reserves the right to contest such.
- 7 p. Whether Plaintiff's causes of action for discrimination and retaliation as to  
8 individual defendants are barred because individual defendants may not be  
9 held personally liable under those causes of action. Plaintiff does not concede  
10 this is a material legal issue in this case and reserves the right to contest such.
- 11 q. Whether Plaintiff's Complaint is improperly brought in this Court, as Plaintiff  
12 is a party to an existing "first filed" complaint pending in another federal  
13 district court. Plaintiff does not concede this is a material legal issue in this  
14 case and reserves the right to contest such.
- 15 r. Whether Defendants can establish that Plaintiff is barred or otherwise limited  
16 under any of the affirmative defenses pled in their answer to Plaintiff's  
17 complaint;
- 18 s. Whether evidence of a history, pattern or practice or race discrimination is  
19 relevant to Plaintiff's claims;
- 20 t. Whether Plaintiff and his counsel are subject to sanctions under Federal Rule  
21 of Civil Procedure 11 for bringing claims against Joe Deely as an individually  
22 named Defendant. Plaintiff does not concede this is a material legal issue in  
23 this case and reserves the right to contest such.
- 24 u. Defendants dispute what legal claims are actually at issue in this action; and
- 25 v. The parties reserve the right to modify or supplement this list of disputed legal  
26 issues if and when additional or different issues become known to the parties.  
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1           **4.     The other factual issues [e.g. service of process, personal jurisdiction, subject**  
2                                   **matter jurisdiction or venue] which remain unresolved for the reason stated**  
3                                   **below and how the parties propose to resolve those issue:**

4           None known at this time, although Defendants continue to investigate this matter and  
5 additional factual matters may arise during that investigation.

6           **5.     The parties which have not been served and the reasons:**

7           None.

8           **6.     The additional parties which the below-specific parties intend to join and the**  
9                                   **intended time frame for such joinder:**

10          None.

11          **7.     The following parties consent to assignment of this case to a United States**  
12                                   **Magistrate Judge for [court or jury] trial:**

13          Plaintiff declines assignment of this case to a United States Magistrate Judge for jury trial.  
14 Defendants decline assignment to a Magistrate Judge for trial.

15                                   **ALTERNATIVE DISPUTE RESOLUTION**

16          **8.     The parties have already been assigned to the following ADR process:**

17          None.

18          **9.     The ADR process(es) to which the parties request referral:**

19          Plaintiff objects to referral to ADR because defense counsel's firm has recently asserted in  
20 another unrelated matter that fully executed settlement agreements are not enforceable by this  
21 Court. Defendants request referral to Early Neutral Evaluation. The parties have both filed a  
22 request for an ADR teleconference, which has been scheduled for March 30, 2006 at 3:00 p.m..

23                                   **DISCLOSURES**

24          **10.    The parties certify that they have made the following disclosures:**

25          The parties certify that they will make the disclosures required under Federal Rule of Civil  
26 Procedure 26 on or before March 28, 2006.



**DISCOVERY**

**11. The parties agree to the following discovery plan:**

The parties agree to the discovery rules and limitations set forth in the Federal Rules of Civil Procedures and Northern District Local Rules, with the exception that Defendants request up to 14 hours to depose Plaintiff, if needed. Plaintiff objects to Defendants' request and contends that 7 hours is ample time to depose Plaintiff. In addition, the parties propose the following deadlines:

- a. Non-expert discovery cut-off: February 13, 2007.
- b. Last day to disclose expert witnesses: February 22, 2007.
- c. Last day to disclose rebuttal expert witnesses: March 8, 2007.
- d. Expert discovery cut-off: March 29, 2007.
- e. Last day to file dispositive motions: April 2, 2007.
- f. Last day to hear dispositive motions: May 9, 2007.
- g. Pretrial conference: June 18, 2007.

**TRIAL SCHEDULE**

**12. Motions:**

Defendants intend to file a motion for summary judgment and/or summary adjudication. Plaintiff intends to file a motion for summary judgment and/or summary adjudication.

**13. Trial Date:**

The parties request a trial date on or after July 9, 2007.

**14. Length of Trial:**

Defendants estimate trial will last 10 days. Plaintiff estimates the trial will last 25 days.

1 Dated: March 28, 2006

PRICE AND ASSOCIATES

2  
3 By: /s/

PAMELA Y. PRICE, Attorneys for Plaintiff  
JOHN EARL CAMPBELL

4  
5 Date: March 28, 2006

JACKSON LEWIS LLP

6  
7  
8 By: /s/

MICHAEL J. CHRISTIAN  
SCOTT OBORNE  
ERIKA M. BARBARA

9  
10 Attorneys for Defendants  
11 NATIONAL RAILROAD PASSENGER  
12 CORPORATION dba AMTRAK and  
JOE DEELY

13 **CASE MANAGEMENT ORDER**

14 The Joint Case Management Statement and Proposed Order is hereby adopted by the  
15 Court as the Case Management Order for the case and the parties are ordered to comply with this  
16 Order. In addition the Court orders: \_\_\_\_\_  
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22 Dated: \_\_\_\_\_, 2006 \_\_\_\_\_  
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